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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

13 CR 316 (JPO)

5 DANIEL HIGHTOWER,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 February 7, 2014  
11:30 a.m.

10 Before:

11 HON. J. PAUL OETKEN,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the  
Southern District of New York

16 MEGAN L. GAFFNEY

Assistant United States Attorney

17 FEDERAL DEFENDERS OF NEW YORK

18 Attorneys for Defendant

19 PEGGY CROSS-GOLDENBERG

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(In open court; case called)

THE DEPUTY CLERK: Starting with the government, can I have counsel state their appearance for the record.

MS. GAFFNEY: Good morning, your Honor. Megan Gaffney for the government. With me at counsel's table with your Honor's permission is Roselyn Sutton, who is an intern with our office.

THE COURT: Welcome. Good morning.

MS. CROSS-GOLDENBERG: Federal Defenders of New York by Peggy Cross-Goldenberg for Mr. Hightower. Good morning, your Honor.

THE COURT: Good morning.

We're here today for the imposition of sentence in this case. Mr. Hightower pleaded guilty on September 5th of last year to one count of assault on a mail carrier causing bodily injury in violation of 18, U.S.C., 111(a)(1)(B), which is a felony under federal law, a Class C felony. I want to start by making sure that I reviewed everything I should have.

In preparation for today reviewed the presentence report submitted by the Probation Department with an addendum and the sentencing recommendation. That also includes a statement from the victim of the assault. I have also reviewed the submission by defense counsel dated February 3rd, along with an attached psychological report, a letter from Mr. Hightower, and letters from his mother and a friend and

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1 submission by the government dated January 23rd.

2 Do I have everything I should have?

3 MS. GAFFNEY: Yes, your Honor.

4 MS. CROSS-GOLDENBERG: Yes, your Honor. Thank you.

5 THE COURT: Ms. Cross-Goldenberg, have you read the  
6 presentence report and discussed it with your client?

7 MS. CROSS-GOLDENBERG: Yes, your Honor.

8 THE COURT: Mr. Hightower, have you read the  
9 presentence report and discussed it with your attorney?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Ms. Gaffney, have you reviewed the  
12 presentence report?

13 MS. GAFFNEY: Yes, your Honor.

14 THE COURT: Are there any objections to the  
15 presentence report?

16 MS. GAFFNEY: Not from the government, your Honor.

17 MS. CROSS-GOLDENBERG: No, your Honor.

18 THE COURT: I hereby adopt the facts set forth in the  
19 presentence report as my findings of fact. The starting point  
20 in any sentence decision in the federal system is the  
21 Sentencing Guidelines, which is a book that contains the  
22 recommended sentence based on the base offense level, type of  
23 crime and criminal history category, the criminal background of  
24 any defendant when you put them together there is a recommended  
25 range of incarceration and any other applicable punishment. I

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1 ma not required to follow the Sentence Guidelines. They are  
2 advisory at this point, however, it is necessary to start with  
3 that calculation. It is the starting point for any sentencing  
4 decision. So I want to start by making sure I have a correct  
5 and accurate calculation of the guidelines. In this case there  
6 was a plea agreement in which the parties stipulated to a  
7 calculation of the guidelines and that appears to be in  
8 accordance with the presentence report calculation.

9 Based on the parties' agreement and my independent  
10 evaluation of the guidelines, I accept the guideline  
11 calculation in the presentence report. I have used the  
12 sentence guideline manual in effect November 1st, 2013.  
13 Although, I believe it is consistent with the prior version of  
14 the guidelines calculation. The base offense level is 14 under  
15 Section 2A2.2 because the victim sustained permanent life  
16 threatening bodily injuries from the assault. There is an  
17 increase of seven points under 2A2.2(b)(3)(C). The conviction  
18 involved violation a 18, U.S.C., Section 111(b) and therefore  
19 there is an increase of two additional points under that  
20 provision. So that is 23 points. However, the defendant  
21 accepted responsibility and so there is a reduction of three  
22 points. The total offense level is 20 under the guidelines and  
23 the defendant is in criminal history category three given his  
24 two prior convictions. So Roman numeral three is the criminal  
25 history. Therefore, the guideline range is 41 to 51 months'

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1 incarceration.

2 I have read all the submissions I mentioned earlier,  
3 but I would like to give defense counsel an opportunity to  
4 speak on behalf of the defendant if there is anything you would  
5 like to add.

6 MS. CROSS-GOLDENBERG: Thank you, your Honor. There  
7 are just a few things I would like to offer the Court and I  
8 know that Mr. Hightower actually he can probably cover them  
9 better than I can, but he would like to address the Court as  
10 well.

11 Your Honor, as I indicated in my letter I think the  
12 guideline range in this case of 41 to 51 months is sufficient  
13 but not greater than necessary to affect the statutory  
14 sentencing objectives. Section 3553(a) requires consideration  
15 of factors that don't always interplay in a very neat way. We  
16 have to consider the need for punishment, the need for  
17 rehabilitation, the need for protection in the community and  
18 the need for deterrence and those things sometimes bear no  
19 relation to each other in terms of what the appropriate  
20 sentence will be.

21 In order to answer the alternate question of how much  
22 type is sufficient but not greater than necessary, we have to  
23 look at the nature and circumstances of the offense, which  
24 obviously were quite serious in this case as well as the  
25 history and characteristics of Mr. Hightower, the guidelines

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1 and the need for treatment and other services that can go to  
2 the goals of sentencing.

3 So I would like your Honor to start with the nature  
4 and circumstances of the offense. As I indicated, this is a  
5 horribly serious offense. As Mr. Hightower wrote in his letter  
6 to the Court, he knows that he made a terrible, terrible  
7 mistake that day, that it was a terrible thing. It will haunt  
8 him forever and he understands that that is nothing compared to  
9 the pain and suffering that he inflicted in this case. Really  
10 he knows he can only imagine how bad that is.

11 I don't want anything that I say to be taken to  
12 minimize both his understanding and the actual facts of what  
13 occurred in this case. I do want the Court to know that he has  
14 repeatedly asked me throughout the course of this case for an  
15 opportunity to apologize. And in terms of the way things are  
16 structured, today really is the time for that and so I know  
17 that he wants to speak to that.

18 I guess the next thing that I want to get to in light  
19 of the nature and circumstances of the offense is the  
20 guidelines in this case. I think your Honor that the  
21 guidelines do adequately consider the factors and the nature  
22 and circumstances of this offense. As the Court knows from  
23 reviewing the guidelines, the base offense level in this case  
24 starts at a 14. If it was a more minor assault, the base  
25 offense level would have been a seven. So already the base

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1 offense level accounts for some degree of seriousness of the  
2 case. Section 2A2.2 gives us the opportunity for between three  
3 and seven points to be added for the degree of injury and in  
4 this case the highest level of points were added because as I  
5 said it was a serious case and the injuries were serious.

6 Mr. Hightower acknowledges that. He signed the plea  
7 agreement. He accepted that highest level of enhancement that  
8 is contained in the guidelines. The guidelines also added  
9 additional two points because of the bodily injury that was  
10 suffered. That is what 18, U.S.C., 111(b) does. So you have  
11 nine points that are added to reflect the seriousness of the  
12 injuries in this case.

13 I don't intend that they can be quantified, but to the  
14 extent that the guidelines are an attempt to treat like cases  
15 alike and to factor in all the nature and circumstances of the  
16 offense, I think it is worth noting that without those  
17 additional points -- for those nine additional points based on  
18 the injuries, the total offense level in this case would only  
19 be a 12. Even in Mr. Hightower's criminal history category,  
20 the recommended sentence would be 15 to 21 months. The  
21 guidelines in this case more than double that to 41 to 51  
22 months. So I think they do adequately take into account to the  
23 extent that any type of quantification can, they take into  
24 account what occurred in this case. Again, I don't say that to  
25 minimize anything, but I say that as we consider the law on

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1 this case I think that the guidelines do account for those  
2 things. They account for both the kinds and the degree of the  
3 injuries that were suffered in this case.

4 So, your Honor, that brings me to the history and  
5 characteristics of Mr. Hightower. I know the Court has read  
6 Dr. Drob's report and I thank the Court for that. I just want  
7 to say in a case like this it seems critical to me to  
8 understand if we are to understand how a possible sentence can  
9 be fashioned to address those 3553 factors to understand sort  
10 of what went into this and where it came from as a means of  
11 figuring out how to prevent this from happening again and what  
12 sort of not only punishment but also rehabilitation or  
13 treatment is necessary.

14 I think, your Honor, in a situation like this someone  
15 who needs the serious treatment that Mr. Hightower needs, jail,  
16 which is the sort of the easiest way to quantify a sentence,  
17 doesn't address the needs in this case. It certainly can keep  
18 him locked up, but it can't address the need for future  
19 protection of the community or deterrence or the rehabilitation  
20 that he needs. As Dr. Drob indicates in her report, Mr.  
21 Hightower suffers from serious psychological problems. He  
22 suffers from posttraumatic stress disorder, mood disorder, from  
23 alcohol abuse, from mixed personality disorder. A lot of these  
24 issues arise out of the beatings that he himself suffered as a  
25 child. That is not any kind of excuse and I know he opened his



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1 letter to the Court by saying he doesn't want to be excused for  
2 what he went through in his childhood, but it the posttraumatic  
3 anxiety and irritability and hypervigilance that all sort of  
4 factors in.

5 When he explains to me these blackouts that he  
6 encounters, he doesn't know why it happens. He is not a  
7 doctor, but he has come to understand how a little thing that  
8 to an outside observer would seem irrational or completely out  
9 of proportion can set him off into this blackout stage where  
10 all he sees is his father and he feels this need to protect  
11 himself against the beatings that his father inflicted on him  
12 he hears the sort of taunting of his father to be a man and to  
13 protect himself and use his fists. I don't say any of that as  
14 an excuse but only to give Court a little insight into how his  
15 brain works.

16 THE COURT: Sorry to interrupt. I want to ask you  
17 about when we talk about treatment in this setting, we usually  
18 talk about a special condition of supervised release of  
19 treatment after a term of incarceration. I think probably  
20 everyone recognizes that a significant term of incarceration is  
21 necessary among others things to reflect the seriousness of the  
22 crime and for the goal of protecting the public and specific  
23 deterrence. There are different levels of medical treatment  
24 within BOP and all I can do is recommend these things and maybe  
25 there are scepticism about the kind of treatment that is

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1 available in Bureau of Prisons, but what about a recommendation  
2 that he undergo? There is something called a Level Three,  
3 which is a more intensive treatment, which is only available in  
4 certain facilities. Is that something that you think would  
5 make sense during the term of incarceration?

6 MS. CROSS-GOLDENBERG: Well, your Honor, in our  
7 experience there isn't the type of treatment within the BOP  
8 that really would address these issues. Our experience with  
9 people who have gone to level-three care facilities when it is  
10 not like a very bad physical condition that they get help for  
11 have been situations where the individual is mentally retarded  
12 or suffers from some sort of severe mental defect where they  
13 need the medical attention. So I have not come across a  
14 facility that would be able to address this kind of treatment.

15 Now, that said there is the residential drug and  
16 alcohol treatment program and we would ask the Court to  
17 recommend that Mr. Hightower participate in that. I think that  
18 is a start to the extent that he has been self-medicating with  
19 alcohol and needs all the assistance he can to battle that  
20 alcohol dependency; but in terms of the really, like,  
21 psychotherapy and the anger management and the intensive  
22 treatment that he needs, as far as we understand that can only  
23 happen once he is released. I understand as I said the months  
24 in prison is the thing that can be most easily quantified in  
25 terms of saying how seriously do we take this case, but I think

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1 that doing that or piling extra months on is counterproductive  
2 in this case because I watched Mr. Hightower struggle while he  
3 has been in the MDC for almost a year now and it is not a place  
4 where you can work on these kinds of mental issues. It is a  
5 place that requires hypervigilance and really exceeds into the  
6 issues that he has.

7 THE COURT: You mentioned RDAP program. I think he  
8 may not be eligible because it is a violent offense; is that  
9 right?

10 MS. CROSS-GOLDENBERG: The way I understand it, your  
11 Honor, he is eligible for participation but he will not be able  
12 to receive time off his sentence. Actually, I think that says  
13 a lot about his insight that he has into his needs and into  
14 really the extent that asking for help and recognizing how bad  
15 you need help is an important first step to having any of that  
16 help work. He realizes that he is not going to get a year off  
17 his sentence in this case if he completes the RDAP program. It  
18 is really just something that he wants to do because he knows  
19 he needs the help.

20 THE COURT: He had alcohol treatment in one of his  
21 prior incarceration I think and I don't think he found it  
22 helpful according to the presentence report.

23 MS. CROSS-GOLDENBERG: I don't think it was anything  
24 as intensive as the RDAP program, which is a 500-hour program  
25 residential, basically around-the-clock treatment program. I

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1 think, your Honor, that is one of the things that Dr. Drob  
2 talked about is how long-term monitoring and treatment is  
3 really what is going to be necessary here.

4 As the Court may know, we now have a social work team  
5 in our office and Mr. Hightower has been working with them  
6 since last spring. As I mentioned in my letter almost  
7 immediately following his arrest, he reached out to me. He  
8 brought up what goes on in his head and these demons that he  
9 fights and beg for help. Unfortunately we couldn't get him any  
10 kind of counseling or therapy while he is at the MDC, but we  
11 were able to have him work with our social work team. Once we  
12 know his approximate release date, we'll be able to work out if  
13 what Probation can offer in terms of treatment is not going  
14 enough, our social work team can step in and help him with the  
15 additional services that he will need.

16 One important thing. His family has moved to  
17 Pennsylvania. He hopes to live with them in Pennsylvania when  
18 he is released. So it may be that we'll need to work with the  
19 Probation Department there, but certainly it worked with other  
20 districts before.

21 One thing that Dr. Drob said that really struck me was  
22 that of this entire incident makes little sense without the  
23 context of the extreme interpersonal sensitive conditioned by  
24 the disorders that he suffers. I think reading the  
25 government's letter, reading the presentence report and in

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1 considering all that, I think that is the question that  
2 everyone has that this doesn't make sense -- Why did this thing  
3 happen? I hope that her report and the results of the testing  
4 that she was able to do give some insight into the only way  
5 that this makes sense. The reason I think that is so important  
6 is that if in order to serve the sentencing objectives of  
7 deterrence and protection of the community and truly to  
8 recognize the seriousness of the offense, I think the  
9 appropriate sentence has to include that sort of intensive  
10 long-term treatment. It just won't happen while he is  
11 incarcerated.

12 I did just want to take one moment, your Honor, to  
13 just respond to sort of the characterization of the  
14 government's letter of Mr. Hightower is a person who has a  
15 problem with violence against women. I think, your Honor,  
16 although I understand why a stranger could look at the paper  
17 trail and come to that conclusion, I think that is a real  
18 misreading of Mr. Hightower's record.

19 The first case, your Honor, his first conviction as I  
20 understand it started as simply people going to a home to  
21 purchase marijuana and another codefendant was the one who  
22 initiated the robbery and committed the violence. So Mr.  
23 Hightower was arrested and convicted because he was there with  
24 him; but in terms of instigating the violence or directing any  
25 of it at a woman, he had no role in that. His other conviction

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1 is for possession of a firearm. Your Honor, his views of women  
2 are his history with women simply can't play a role in this  
3 case. It was as he describes it, and I think I recounted this  
4 in my letter, it was no fault of anyone's other than his; but  
5 he had been drinking, he was in a upset mood and that is the  
6 trigger that sets him off and he was afraid that the mail  
7 carrier could see into him, knew that he had been drinking and  
8 judged him and thought he was a bad person. That is the kind  
9 of thing that triggers the blackout state where he feels he is  
10 protecting himself from his father. As I said that is where  
11 the cycle can be broken if he gets treatment to deal with that.

12 I think as I mentioned that the insight that he has  
13 attained is important because this is not simply his attorney  
14 telling the Court that these are the things he needs. These  
15 are the things that he has asked for. I think one of the  
16 things Dr. Drob mentioned in her report is that she had given  
17 him some -- she couldn't treat him. It wasn't a situation  
18 where she could have repeated therapy sessions with him, but  
19 she gave him some techniques he could use in terms of anger  
20 management or stop-thought techniques and he has been really  
21 attempting to employ those at the MDC and I have been able to  
22 watch his commitment to that and sort of his struggle with it.

23 Your Honor, he is still horrified by what he did as I  
24 am sure everyone in this room is. He never, ever, ever wants  
25 to do anything like this again. He obviously is sad because he

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1 is away from his family and missing his daughter's life, but  
2 that isn't even a factor in what upsets him so much. He knows  
3 what it is like to be the victim of abuse and he is horrified  
4 that he has inflicted that trauma on someone else. He doesn't  
5 want to do that again. He is craving the help that will help  
6 him overcome posttraumatic stress and the other psychological  
7 issues that he can't battle on his own.

8 So, your Honor, in light of all these factors, I think  
9 that the guidelines range of 41 to 51 months is the appropriate  
10 range in this case and that a sentence within that range does  
11 adequately factor in all of the sentencing factors and really  
12 anything more than that range would be a greater prison term  
13 than is necessary because it actually would be  
14 counterproductive to the other goals of sentencing.

15 Thank you, your Honor.

16 THE COURT: Thank you.

17 Mr. Hightower, if there is anything you would like to  
18 say today, you may do so now. Speak into the microphone.

19 MS. CROSS-GOLDENBERG: Do you want him to stand, your  
20 Honor?

21 THE COURT: You can stay seated if you would like.  
22 Either one. Whatever you are comfortable with.

23 THE DEFENDANT: First off, your Honor, I would like to  
24 say I deeply apologize from my heart to the victim for any pain  
25 I caused her, any inconvenience I caused her to her work, her

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1 job and to her family too because I know like Ms. Peggy said  
2 everyone want to know why I picked her or why I did what I did  
3 to her. It wasn't intentional. I didn't, like I said, I went  
4 out to hurt her.

5 THE COURT: Do you remember it?

6 THE DEFENDANT: A little bit, your Honor. Like a  
7 remember a little of it. I know I was upset that day. I was  
8 drinking that day, got out of line. I also read that she was  
9 traumatized for my actions. I understand where she is coming  
10 from and I deeply apologize for that, too, for the simple fact  
11 is a was traumatized since I was five years old to where my  
12 father beat me like I was a grown man. I had blood clots in my  
13 head and from then on I watched him beat my mother physically.  
14 And right there she said, Oh, you shouldn't want to do that to  
15 anybody. We watch as the years go on. It was like I was a  
16 sponge. This is what I see. This is what I know. When I get  
17 upset, this is who I see, your Honor, my father's face and I am  
18 going to try to protect myself from any harm because I am not a  
19 kid no more. I can stop him. He cannot hurt me. I am strong.  
20 I can protect myself. This is what I see. I just black out  
21 when I get upset. The only person who was able to snap me out  
22 of certain things when I was around was my mother. She was  
23 like my psychiatrist, my medication, my mother. She has always  
24 been there for me no matter what, no matter what I do she is  
25 there. She is right now today. 33 years old she is still



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1 here.

2 Back to my situation. I do feel like I get over upset  
3 to where when I snap back to reality from what I done from my  
4 anger, the damage is there and all apologizes, sorries is not  
5 going to change what I did. I deeply apologize for that. She  
6 had nothing to do with my anger. Like I said, it is a moment  
7 to where I felt a threat. A person can give me a body  
8 language, person can give me a messed up look and I snap. I do  
9 realize that, your Honor. I take full responsibility for that.

10 I am also looking for help. I only have my father.  
11 When Ms. Peggy -- when I was telling Ms. Peggy about my  
12 situation and she sent the psychiatrist to come see me, you  
13 know, she gave me cues to do, count from 100, breathe. She  
14 told me to put a stop sign mirror of myself. While I am in  
15 jail, I protect myself. And these are strangers, I don't know,  
16 as the lady was. I don't know her. I don't have no friends in  
17 there. I don't talk to them. I stay to myself. I do that  
18 because I don't want to look like this horrible person that I  
19 am pointed out as today beating people up. That is not the  
20 case, your Honor.

21 Yes, I had little problems with my kid's mother and my  
22 wife, order of protection thing. That is a whole different  
23 story. There it is more too it. I do have a problem, your  
24 Honor. Sometimes I am really depressed. I get into this mood  
25 to where I don't want to be bothered by anybody. When I sleep,

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1 I think about my past and all the bad I did. Right now today I  
2 feel even worse. The fact is I am here again in jail again  
3 hurting not only myself but my family too.

4 I have four kids. They are growing up. I am going to  
5 miss more of their life because of my stupidity because I don't  
6 know how to control my anger. I am not looking for any pity.  
7 I already know what is going to happen. I know what is going  
8 on today. I have been through it already. I don't want anyone  
9 feeling sorry for me. I know there are females in here and  
10 they are thinking, Oh, God, this guy is no good. Keep him  
11 locked away for good. I apologize for that to all the females  
12 in this room. It was a female that was hurt. I really, really  
13 am sorry to the woman that I hurt and maybe I know she is not  
14 going to forgive me. Hopefully one day she will get over  
15 traumatization -- I think I am saying that right -- of what I  
16 have done to her.

17 Like I said before, your Honor, I know what I did, I  
18 know I hurt her bad. I am ready to take my punishment for it.  
19 I know I am not going home. I know the rules. I want to let  
20 everyone know what is going on in my head and why I did what I  
21 did. Ms. Peggy, she did the best she could do for me. Like I  
22 said, I don't want anybody to feel sorry for me. I do  
23 apologize.

24 THE COURT: Thank you.

25 THE DEFENDANT: Thank you for the time to speak.

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1 THE COURT: Thank you.

2 Ms. Gaffney, if is there anything you would like to  
3 say, you may. I read the government's submission. If there is  
4 anything you would like to add, you may.

5 MS. GAFFNEY: Yes, your Honor, briefly. As you know  
6 from reviewing our submission, the government feels this is  
7 that exceptional case that warrants an upward variance from the  
8 sentencing guideline range here. When the government submitted  
9 its papers on this, we didn't have the benefit of the  
10 defendant's submission, psychological report or the arguments  
11 that we have heard today. I want to center my argument on just  
12 what we have learned from the submission and what the arguments  
13 have been here today and tie that to the 3553(a) factors, which  
14 upon reviewing the defendant's submission and hearing the  
15 defendant's arguments today, actually cuts in favor of that  
16 upward variance in a number of categories under 3553(a).

17 First, affording adequate deterrence to criminal  
18 conduct, which is one of the factors. We hear today and it was  
19 noted in the submission that Mr. Hightower is now taking full  
20 responsibility for his actions. It was a terrible mistake. He  
21 wants to apologize. Here is where it is helpful to look at the  
22 history of this case. He was arrested in the spring and the  
23 defense has argued to beg for help in the spring.

24 MS. CROSS-GOLDENBERG: Can i just ask you to speak  
25 into the microphone. I am having a hard time hearing you.

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1 MS. GAFFNEY: Sure.

2 He begged for help in the spring allegedly with his  
3 anger management problem, but he didn't plead guilty in this  
4 case until the fall. In fact, he assisted on getting DNA  
5 results to prove that he was the one involved in this offense.  
6 His plea only came after we conclusively determined through  
7 forensic evidence that it was the victim's blood on his shoe  
8 that tied him to the offense. So whatever his apologies and  
9 his accepting responsibility, it only came after the evidence  
10 was overwhelming that he was involved in this assault.

11 Second, on the point of rehabilitation and treatment  
12 for the defendant. As your Honor has recognized, the BOP has  
13 procedures and help in place to assist defendants who need a  
14 full range of mental health treatment. This is a  
15 representation the BOP has made in their documents. They  
16 provide a full range of mental health treatment through staff  
17 psychologists and psychiatrists. They have psychologists  
18 available for formal counseling and treatment on an individual  
19 or a group basis and in addition they have staff in the  
20 inmates's housing unit that are available for more informal  
21 counseling. They also have a number of substance abuse  
22 programs in place for inmates. For instance, drug abuse  
23 education and programs your Honor has referenced to assist  
24 inmates while they are incarcerated to address both their  
25 mental health concerns and their substance abuse concerns.

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1           If you look at the psychological report that was  
2 submitted in this case, the psychologist here notes, "Mr.  
3 Hightower appears to be best when he is in a structured  
4 situation in which expectations are clear." That is the very  
5 definition of incarceration. So that even on the  
6 rehabilitative point, the 3553(a) factor there, that cuts in  
7 favor of a more extended prison term. Just to add,  
8 Ms. Cross-Goldenberg referenced that he was not receiving  
9 sufficient assistance at the MCC. He will not be housed long  
10 term at the MCC so that is pretty irrelevant to the  
11 consideration here.

12           Finally, most importantly, the 3553(a) factor that  
13 involves protection of the public from further crimes of this  
14 defendant, what we see in the report, what we see in the  
15 defense submission and what we hear from the defendant today is  
16 truly terrifying. This was a senseless crime, completely  
17 senseless. He goes outside, he has had a bad day and he picks  
18 the victim who was simply doing her job. She was delivering  
19 the mail. He somehow sees his father in this vulnerable victim  
20 and approaches her from behind and begins a vicious assault.

21           He says here that when he sees his father, he wants  
22 protection from harm. When he sees his father's face that is  
23 what he is violently reacting to. He is protecting himself.  
24 But she had no way targeted him. She in no way provoked him.  
25 She was doing her job. She wasn't even facing in his

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1 direction, and he needs protection from harm. He sees her. He  
2 targets her. He nearly kills her. Thank God in this case  
3 there was an eyewitness who stopped the assault who broke the  
4 blackout or however they want to define it because that attack  
5 was proceeding and it was only after the eyewitness called out  
6 and chased after him that he stopped. We see from the  
7 photographs submitted, from the letters that the victim  
8 provided that this horrific attack caused permanent life  
9 threatening injuries to the victim in this case and that was  
10 after only a couple minutes of assault. If that eyewitness  
11 hadn't been there, she very well could have died. When she  
12 went to the hospital that night, the doctors weren't clear she  
13 would make it through the night because of the brain swelling  
14 she suffered.

15 What we have here is someone who by the psychologist's  
16 own words has a serious problem with his temper. He has  
17 episodes where he irrationally angry and interprets a look --  
18 someone rolling their eye, an accidental physical contact or  
19 someone close to his personal space -- as a provocation and a  
20 threat and he acts impulsively in response to that.

21 The report says that he reports he felt a flash of  
22 rage and attacked the victim in this case. He says here that  
23 he sees his father when he has some alcohol or when he has had  
24 a bad day. He has triggers that set him off. And if you  
25 happen to be the innocent victim in his path when one of his

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1 triggers is set off, then you could face the same sort of  
2 violent response that the victim in this case felt.

3 The idea that in response to truly senseless violence,  
4 we would reduce prison time so that he could somehow address  
5 his deep psychological issues is the most senseless of all.  
6 This is precisely the person that the public needs protection  
7 from, someone who has no control over his emotional response  
8 and is willing to inflict life altering physical damage to an  
9 innocent person that just happens to be delivering mail on the  
10 particular day that he decides he needs to respond to his  
11 father's anger.

12 THE COURT: Do you want to address the argument? I  
13 take all your points. And this was, everyone agrees, a brutal  
14 and senseless acts of violence; but why above the guidelines?  
15 Why isn't that what is taken into account by the 14-point level  
16 and the seven additional points and two additional points  
17 doesn't that all reflect how serious it is? And 41 to 51  
18 months is at the top the range. That is four years and three  
19 months. It is a pretty long sentence for assault. So what is  
20 it about this that makes the guideline range in sufficient?

21 MS. GAFFNEY: First, the fact that the guideline range  
22 considers the type of harm inflicted here, the serious bodily  
23 injury and the fact that the B statutory enhancement applies is  
24 relevant; but as the Second Circuit made clear in United States  
25 v. Kay above-guideline sentence is appropriate where even where

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1 the guideline adequately considers the kind of harm suffered by  
2 the victim. Here it would be serious bodily injury. The  
3 Second Circuit said that it did not think that the guidelines  
4 adequately considered the degree of harm that she suffered.

5 Now, under the guideline range it is serious bodily  
6 injury that gets him to the enhancements, but what we're  
7 talking about here is really a life sentence for this victim.  
8 As she describes in her letter and as is clear from various  
9 social science research, she is going to experience the  
10 psychological trauma of this event for the rest of her life and  
11 she will experience possibly the physical effects for the rest  
12 of her life. She described in her letter she has painful  
13 headaches. She has a bulging disk in her neck, shoulder. She  
14 has pain in left hand. She has got insomnia. She still hasn't  
15 returned to work. So one could experience serious bodily  
16 injury of a broken arm and leg and that would heal within a  
17 year. But we're looking at physical and psychological trauma  
18 that is going to last the rest of her life and that is  
19 precisely the degree it -- her degree of harm is so extreme  
20 that this guidelines range even with the enhancements doesn't  
21 incorporate that, doesn't appreciate that and that is where an  
22 upward variance would respond to that because he gets out in a  
23 little over four years. She spends the rest of her life  
24 struggling with this. So in that way, this is the case that  
25 even though there are enhancements to cover the injuries, they



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1 don't sufficiently represent the kind of harm that she has  
2 suffered here.

3 Furthermore, I think the purely senseless nature of  
4 this crime suggests that is not incorporated in any the  
5 enhancements here. We don't have an enhancement for totally  
6 random, unprovoked nearly deadly assault. He didn't steal  
7 anything. He didn't target her because she had a personal  
8 issue. There was no underlying explanation. Not that that  
9 would excuse this level of violence, but we're dealing with  
10 something that is just truly terrifying and how senseless it  
11 was.

12 THE COURT: Thank you.

13 One other question I have for Ms. Cross-Goldenberg is  
14 that Dr. Drob's report is that in terms of getting the relevant  
15 information from BOP is there some way to ensure that gets sent  
16 along? Is there a way to attach it to the record or PSR?

17 MS. CROSS-GOLDENBERG: I do, your Honor. I can e-mail  
18 it to the Probation officer who wrote the presentence report.  
19 My understanding is he is responsible for submitting the  
20 materials to the BOP. So we can ask him to submit it as well.  
21 As I said, I don't think there is any type of treatment that  
22 the BOP will offer him that will would be reflective intensive  
23 counseling and therapy he needs that the report reflects and  
24 that Mr. Hightower needs.

25 THE COURT: The victim of this crime is here,

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1 Ms. Atkins. I have read the letter that you submitted and the  
2 other documentation. I also have seen pictures from after the  
3 assault of you. If you would like to speak today, you may.  
4 There is no pressure and it may be uncomfortable, but you are  
5 welcome to.

6 MS. ATKINS: Where would you like me to stand?

7 THE COURT: Would you be able to come up to where the  
8 microphone at the front table and try to speak into the  
9 microphone? Thank you. You can sit or stand. Whatever you  
10 prefer.

11 MS. ATKINS: Thank you.

12 THE COURT: Your name is Lisa Atkins A-t-k-i-n-s?

13 MS. ATKINS: Yes. This is the second time I have been  
14 in a courtroom in my lifetime. I thank the Court for this time  
15 and I ask you all to be patient. I didn't decide until five  
16 seconds ago that I was going to actually speak. I figured I  
17 would let my letter, pictures speak for themselves; but I have  
18 heard a lot in here today from both sides and I know everybody  
19 is here to do their job and represent their party.

20 I am not here for judgment. That is up to God and the  
21 judge to decide how much time Mr. Hightower is going to get.  
22 That really was not any interest to me at all. I will just  
23 start by saying that I am a very independent, carefree loving  
24 woman who worked extremely hard. I don't have any children. I  
25 am not married. So therefore I actually enjoyed my job. I

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1 hate the cold, but I enjoyed my job. This attack happened on  
2 one of the coldest days in January. I was literally at my last  
3 point of delivery. The very last of the day after being out  
4 there all day. It literally from that point to my station  
5 takes me eight minutes. By the time I finished my mail at the  
6 job and clocking out, half an hour I would have been on my way  
7 home. Instead, I ended up in the hospital for four days. By  
8 the grace of God I don't remember any of it and I know that He  
9 did that to protect me because I don't remember the first blow,  
10 the last blow, anyway.

11 We're here not because Mr. Hightower turned himself in  
12 or felt so guilty about what he did. We're here because of  
13 evidence, a witness and videotape. That is why we're here. I  
14 understand that people have terrible childhoods, abusive  
15 parents of all types, alcohol, what have you, drugs. We all  
16 have some of that in our lives. But to do what he did, I had  
17 to convince the detectives on my case that this was not  
18 personal because the beating was so severe. I had never spent  
19 a day of my life in a hospital. I have never had a broken  
20 bone, fractures, stitches. Never spent a day in a hospital.

21 What that did to my family and my friends hurt me more  
22 than anything. I can heal from my facial wounds, maybe even a  
23 fracture; but I have bulging, herniated disks in my neck and  
24 back because somebody had nothing else to do with his damn  
25 time. If you are upset at your wife, partner, kids, you take a

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1 walk. You don't take a walk and beat the hell out of someone  
2 who is literally doing their job. He was at my back. You  
3 couldn't tell whether I was female or male because first of all  
4 it is general. I have on all of my gear. My back is to him,  
5 to the street. I am on the street. I wasn't even in the  
6 building. I am on the last point of my delivery, outside at of  
7 a box.

8 The worse thing about a postal worker is having  
9 someone come from behind them, some people are constantly  
10 reaching for the mail. Let us finish. It only takes a few  
11 minutes. If you don't have your key, show us your ID and we'll  
12 give you your mail. No problem. This is not even his street.  
13 You don't even live here. So I know it is not a question of do  
14 you have a package. Do you have -- there was no reason for him  
15 to approach me. So therefore I don't know whether I turned and  
16 I -- like I said, I don't even remember the first blow and I  
17 thank God and nobody but God put that witness there. Like my  
18 attorney says that beating would have continued and one more  
19 blow, one more kick, I have no idea whether I would be able to  
20 see out of my eye or how much brain damage would have been  
21 done. God saw fit to put someone there that stopped that act.

22 Like I said, he didn't call. He didn't go to the  
23 police station to say, you know, I did this terrible thing. I  
24 had a blackout. I was angry with my partner or whomever. I  
25 had an episode and I need help. As the testimony I heard

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1 testimony, there was plenty of time throughout his life for his  
2 family, for himself and as an adult to go get proper help. He  
3 didn't do that. Even when he had the opportunity to do it,  
4 whether he finished the program or whatever the case may be.  
5 You know, you mentioned that he has children. If you don't do  
6 it for yourself, do it for your children. It is too many  
7 fatherless children out here and you out here doing what you  
8 are doing to a woman, and again he couldn't tell. There is no  
9 way he could have told I was a man or a woman. I was short and  
10 he towered over me.

11 I have been the healthiest in my life prior to this.  
12 Like I said, I went to routine yearly physicals. Eyeglasses,  
13 dentist. Never a root a canal nor toothache or cavities.  
14 Because of my facial damage that Mr. Hightower did, caps with  
15 root canal. I didn't know what the hell that was. I heard  
16 about it, but to experience that and to all the healing that I  
17 had to go through and still I never been to a psychiatrist. I  
18 have to go once a week. Physical therapy, three times a week.

19 I don't have job that I had before that I actually  
20 enjoyed. I actually enjoyed by job. The people on my route  
21 knew me. Never had a problem. Never had a problem. There is  
22 nothing on my record. I have done it for seven or eight years  
23 and I actually enjoyed do. I hated the cold, but I had the  
24 right equipment on and any other day whether I need it, whether  
25 summer or winter, I always had the proper gear on. I don't

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1 have any blemishes on my record.

2 Now, I know physically, mentally I can never do that  
3 job again. That changed everything. I have no idea what  
4 course God is going to put me on, what kind of work I will be  
5 doing or able to do. I look totally healthy right now, but  
6 tomorrow I have to go to physical therapy. Next week I have to  
7 go see my psyche. It's been an amazing, unbelievable year.  
8 Thirteen is a bad luck number. It has been one hell of a year  
9 and I will never forget it. The fact that I didn't start  
10 remembering my -- my earliest memory of that event was late  
11 February, which was not even now. It was after Valentine's Day  
12 of last year. That is the earliest memory I have. All the  
13 rest is filled in blanks from family and friends. They said I  
14 was talking. They prayed over me.

15 The only thing I wanted to do was see him for five  
16 minutes. I just wanted to sit down and talk to him for five  
17 minutes. I remember that. Inspectors said, No, you cannot do  
18 that. Not to hurt him, but I knew that something had to happen  
19 in this person's life because to know me you would never do  
20 harm to me ever. I am one of the kindest people you will meet.  
21 I am the most giving person. This hurt my family. Those who  
22 are abroad and here just to get the phone call that something  
23 happened to me on my job, that somebody did harm to me, not  
24 knowing whether I am going to make it through the night. I  
25 can't even imagine that kind of -- they can't get to me. Only

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1 thing they could do is pray for me and I felt all those  
2 prayers, I did, to this day.

3 I really do pray that Mr. Hightower gets the help that  
4 he needs so that this never, ever happens to anyone else again,  
5 not even a bump, to bump into someone just to have compassion  
6 for someone. To know what that truly means. Even if you are  
7 having those episodes, think of your children that if I can  
8 complete this act that is going to take me away from my  
9 children once again. They don't deserve that. They didn't ask  
10 to be here. They didn't ask to be here. You brought them  
11 here. It is your job to raise them. No one else should be  
12 raising your children. We have enough grandmothers out here  
13 doing it. Grandmothers, grandparents. I think these days  
14 aunts and uncles. It is not fair to them. It is not fair to  
15 them. I do pray that he gets the help that he needs.

16 I thank the Court for your time. I truly do. Thank  
17 you so much.

18 THE COURT: Thank you.

19 Is there any reason why sentence should not be imposed  
20 at this point?

21 MS. GAFFNEY: No, your Honor.

22 MS. CROSS-GOLDENBERG: No, your Honor.

23 THE COURT: In preparing the sentence, Mr. Hightower,  
24 I have considered the presentence report, the recommendation of  
25 the Probation Department, the written and oral statements of

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1 defense counsel, defendant, the government as well as the  
2 victim and letters submitted on behalf of the defendant as well  
3 as the psychological report. I have considered each of the  
4 factors set forth in 18, U.S.C., 3553(a). These are all the  
5 factors that govern my decision on sentencing. They include  
6 the nature and circumstance of the crime, the defendant's  
7 history and characteristics, the need to reflect the  
8 seriousness of the offense, provide just punishment, promote  
9 respect for the law, afford adequate deterrence for criminal  
10 conduct, to public protect the public, provide any needed  
11 medical care or other correctional treatment to the defendant.  
12 Also, the sentencing guideline provisions, the need to avoid  
13 unwarranted sentencing disparities among defendants and the  
14 need to provide restitution to the victim.

15 I am required to impose a sentence under the law that  
16 is sufficient but not greater than necessary to serve all of  
17 those purposes and one of the hardest things I do and have to  
18 do in this job is balance all of these different factors in  
19 hard situations. First, I am going to talk about the nature and  
20 circumstances of this crime and tied in with that are what is  
21 just punishment for the crime, seriousness for the crime and  
22 the need for the sentence to reflect support and respect for  
23 law.

24 This was a serious crime as we've all heard here today  
25 by its nature involving the assault of a federal worker who was



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1 just doing their job resulting in permanent bodily injuries,  
2 life threatening injuries and in this situation it was a  
3 particularly brutal, senseless act of violence. The defendant  
4 didn't know the victim or have any connection with she was  
5 doing in her job. The defendant punched her, knocked her to  
6 the job and kicked her repeatedly in the face and head,  
7 fractured her eye socket, broke her teeth, slit the flesh on  
8 her face and inside her mouth and left her unconscious. The  
9 assault went on for two or three minutes and I think what is  
10 disturbing is that it might have continued had it not been for  
11 an eyewitness who apparently yelled at him and got him to stop  
12 and run away.

13 It might have continued to the point whereas the  
14 victim has pointed out she could have had serious brain injury.  
15 She could have lost her sight. She could have been killed. So  
16 there is no question it is a serious crime. The crime has  
17 changed the victim's life. She is not working. She will not  
18 be able to probably work in the same job which she liked. She  
19 is in ongoing physical therapy and counseling and other  
20 treatment.

21 I also need to consider the history and  
22 characteristics of the defendant. The defendant, it is clear,  
23 had a difficult childhood. It was chaotic. He suffered  
24 serious abuse from his father who physically assaulted him  
25 during a time when the father was addicted to crack cocaine.

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1 The defendant also suffers from a sever psychological and mood  
2 disorders and posttraumatic stress order probably as a result  
3 of the serious abuse he faced as a child. I do think it is  
4 clear that he needs mental health treatment, intensive mental  
5 health treatment. He has a lot to work on. It is also  
6 essential to take into account the past violent behavior of the  
7 defendant. He has two prior convictions, both of which involve  
8 violence in one way or another. There is also a pending charge  
9 which also is alleged to have involved violence, as well as an  
10 order of protection. I know there is a fuller story on orders  
11 of protection, but it is something that involved potential  
12 violence. The second of the two convictions was only a year or  
13 so before the incident in this case.

14 Now, this past violent behavior is relevant to the  
15 history and characteristics of the defendant, but also two  
16 additional factors I need to consider. Significantly the need  
17 to protect the public from future crimes of the defendant and  
18 need for specific deterrence to prevent him from committing  
19 these crimes again or other crimes. These considerations I  
20 think are heightened by the brutal and random nature assault in  
21 this case. It is clear that the defendant needs to be  
22 incapacitated for some period of to protect the public. The  
23 question is what will be a sufficient period of time to protect  
24 the public and deter him from committing crimes in the future.  
25 This must be considered along with the treatment that he needs.

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1 I don't believe that it is justified in this case to  
2 give him a shorter sentence on the theory that he should get  
3 treatment as soon as possible as a condition of supervised  
4 release because the risk of future violent behavior and the  
5 need to protect the public are too great. I do intend to  
6 recommend that he be given treatment while in the Bureau of  
7 Prisons and that he be given treatment while on supervised  
8 release following his release. I do note, as the government  
9 pointed out, that in Dr. Drob's report indicating that he has  
10 serious issues and struggles, but there were two things in  
11 there that I do think in addition to the need for  
12 incapacitation and protecting the public support a significant  
13 jail term. One is the structured environment that I think may  
14 help him in some ways and the second things is there is a  
15 reference to aging out of some of the behaviors as someone gets  
16 older. I think the incapacitation for a period of time even if  
17 it is not the ideal treatment available at the Bureau of  
18 Prisons serves a purpose of spending a period of time where  
19 hopefully some of the behaviors with treatment in the BOP will  
20 become less of a likelihood in the future.

21 The guidelines are something I also need to consider.  
22 As you know they are a starting point, but I am not bound by  
23 them. The government asks that I impose a sentence above the  
24 guidelines. The guidelines provide for 41 to 51 months'  
25 incarceration. 51 is four years and three months. That does

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1 reflect the seven-point increase for permanent and  
2 life-threatening injuries and a two-point increase because of  
3 the statutory provision involved and the infliction of bodily  
4 injury.

5 At the end of the day, I believe that a sentence on  
6 the high end of the guideline range is appropriate. I think  
7 the high end is appropriate because of the particularly brutal  
8 and senseless nature of assault here as well as the past  
9 violent behavior and risk of future violent crimes. I  
10 ultimately believe that the brutality is taken into account by  
11 the guideline calculation although at the top of the range.  
12 For this reason I intend to impose a sentence of 51 months'  
13 incarceration. It will be followed by three years of  
14 supervised release. I am not going to impose a fine because I  
15 don't believe he has the ability to pay one, although there is  
16 a \$100 special assessment and I am going to order restitution  
17 to the victim in the amount of \$7,573.

18 Does defense counsel know of any legal reason why the  
19 sentence may not be imposed as stated?

20 MS. CROSS-GOLDENBERG: No, your Honor.

21 THE COURT: Does government counsel?

22 MS. GAFFNEY: No, your Honor.

23 THE COURT: Mr. Hightower, please stand.

24 It is the judgment of this Court that you be committed  
25 to the custody of the Bureau of Prisons for period of 51

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1 months. Following release you will be placed on supervised  
2 release for a period of three years with the following  
3 conditions: You will not commit a federal, state or local  
4 crime. You will not illegally possess a controlled substance.  
5 You will not possess a firearm or destructive device. You will  
6 refrain from the unlawful use of controlled substances. You  
7 will submit to one drug testing within 15 days of your  
8 placement on supervised release and at least two unscheduled  
9 drug tests thereafter as directed by Probation. You will  
10 cooperate in the direction of DNA as directed by the Probation  
11 officer.

12 The standard conditions are imposed with the following  
13 special conditions: The defendant will participate in a mental  
14 health program approved by the U.S. Probation Office. The  
15 defendant shall continue to take any prescribed medications  
16 unless otherwise instructed by the healthcare provide. The  
17 defendant will contribute to the cost of services rendered not  
18 covered by third-party payment if the defendant has the ability  
19 to pay. The Court authorizes the release of psychological and  
20 psychiatric evaluations and records to the healthcare provider.  
21 The defendant shall provide the Probation officer with access  
22 to any requested financial information. The defendant shall  
23 not incur any new credit charges or open additional lines of  
24 credit without the approval of Probation, unless the defendant  
25 is in compliance with the installment payment schedule. The

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1 defendant will report to the Probation Office within 72 hours  
2 of release from custody.

3 Further, I order that the defendant shall pay to the  
4 United States a special assessment \$100 due immediately and it  
5 is further ordered that the defendant shall make restitution  
6 payable to the clerk U.S. District Court for payment to the  
7 victim, 500 Pearl Street, New York, New York for disbursement  
8 to the victim in the amount of \$7,573.

9 If the defendant is engaged in BOP the nonUNICOR work  
10 program, he shall pay \$25 per quarter toward the criminal  
11 financial penalties. If he is in the BOP UNICOR program, he  
12 shall pay 50 percent of his monthly UNICOR earnings toward  
13 financial penalties. The restitution shall be paid in monthly  
14 installments of 10 percent of gross monthly income over the  
15 period of supervision commencing 30 days after the date of  
16 judgment or after the date of release from custody. The  
17 defendant shall notify the U.S. Attorney of this district  
18 within 30 days of any change of mailing or residence address  
19 that occurs while any portion of restitution remains unpaid.  
20 The fine is waived in this case. However, as I said, there is  
21 a \$100 special assessment.

22 I will make the following recommendations to the  
23 Bureau of Prisons: First, that the defendant provide all  
24 appropriate medical treatment, including mental health  
25 evaluations and treatment that the Bureau of Prisons,

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1 specifically consider Dr. Drob's report in considering him for  
2 any mental health treatment and conducting such treatment and  
3 evaluations. Also, that he be considered for placement in the  
4 residential drug and alcohol abuse programs with Bureau of  
5 Prisons.

6 Mr. Hightower, you have a right to appeal from your  
7 conviction and sentence accept to whatever extent you have  
8 validly waived that right as a plea agreement. If you are  
9 unable to pay the cost of appeal, you can file a leave for  
10 appeal in forma pauperis. Any appeal must be filed within 14  
11 days of judgment. I am directing that a complete copy of the  
12 presentence report be provided to the Bureau of Prisons and  
13 Sentencing Commission. Counsel on any appeal will have access  
14 to the report. The clerk will prepare the judgment and see to  
15 it that the required documentation is sent to the Sentencing  
16 Commission.

17 Is there any underlying count that needs to be  
18 dismissed.

19 MS. GAFFNEY: No, your Honor.

20 THE COURT: Anything further?

21 MS. CROSS-GOLDENBERG: No. I just have a couple quick  
22 things, your Honor, with respect to the Court's recommendation  
23 if the Court would also recommend that he be designated to a  
24 facility in Pennsylvania. I think I mentioned Allenwood and  
25 Schuylkill in my letter -- I can spell that for the court

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1 reporter after if you want -- to facilitate family visits and  
2 rehabilitation. I can't recall if the Court said this or not,  
3 that he be supervised in the district of his residence, which  
4 we expect will be with his parents in Pennsylvania.

5 THE COURT: Yes. If I didn't make that clear, I am  
6 going to order that he be supervised by his district of  
7 residence upon supervised release.

8 MS. CROSS-GOLDENBERG: Thank you, your Honor.

9 THE COURT: I will make the recommendation to  
10 Allenwood or --

11 MS. CROSS-GOLDENBERG: Allenwood and I think you  
12 pronounce it Schuylkill, S-c-h-u-y-l-k-i-l-l.

13 THE COURT: I will recommend to the Bureau of Prisons  
14 that he be placed in a facility in Pennsylvania, which may  
15 include Allenwood or Schuylkill if it is an appropriate  
16 designation.

17 MS. CROSS-GOLDENBERG: Thank you, your Honor.

18 The final point, and I know this is a very convoluted  
19 issue in terms the law, as the Court knows he has an open state  
20 case, which he is contesting and has pled not guilty, but I  
21 would ask that the Court, I am told the magic language is,  
22 designate a state facility for the service of his federal  
23 sentence so that will permit his federal sentence to continue  
24 to run even if he is held in the state custody. Otherwise, as  
25 I understand it his BOP will not credit him with my time when



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1 he is being transported back and forth and there is no way how  
2 much time will be lost because of that.

3 THE COURT: This would only be a recommendation?

4 MS. CROSS-GOLDENBERG: Exactly.

5 THE COURT: The recommendation would be that? What is  
6 the language?

7 MS. CROSS-GOLDENBERG: That they designate a state  
8 facility for the service of his federal sentence and that would  
9 simply allow the clock to continue to run on his federal  
10 sentence even while he is -- for example, if he is produced on  
11 a writ to state court or while he is being transported back and  
12 forth, it will allow his time to continue to accrue.

13 THE COURT: Is there any objection to that?

14 MS. GAFFNEY: No objection, your Honor.

15 THE COURT: I will recommend that the BOP recommend a  
16 state facility as a federal place of incarceration for service  
17 of his federal sentence.

18 MS. CROSS-GOLDENBERG: Thank you, your Honor. We  
19 appreciate that.

20 THE COURT: Anything further?

21 MS. GAFFNEY: Your Honor, Mr. Skolnik raised this  
22 procedural issue. We had an original indictment in this case  
23 that had a typo. It charged 111(a)(1) and (2) and what it  
24 should have read was 111(a)(1) and (b). The superseding  
25 indictment corrected that typo. I don't know if I need to move

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1 to dismiss formally move to dismiss (a)(2); but in case I do, I  
2 move to dismiss (a)(2).

3 THE COURT: There was an underlying indictment?

4 MS. GAFFNEY: Yes.

5 THE COURT: So we should just to be sure dismiss that  
6 underlying indictment?

7 MS. GAFFNEY: Yes.

8 THE COURT: On and application that application is  
9 granted and underlying application is dismissed.

10 Anything further?

11 MS. GAFFNEY: Not from the government. Thank you.

12 THE COURT: Anything further?

13 MS. CROSS-GOLDENBERG: Nothing from us. Thank you.  
14 Your Honor.

15 o0o